



REPUBLIC OF KENYA



In re Estate of Narshi Punja Lakhtir Shah (Deceased) (Succession Cause 2502 of 2010) [2023] KEHC 22105 (KLR) (Family) (3 July 2023) (Ruling)

Neutral citation: [2023] KEHC 22105 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 2502 OF 2010
EKO OGOLA, J
JULY 3, 2023
IN THE MATTER OF THE ESTATE OF NARSHI PUNJA
LAKHTIR SHAH (DECEASED)**

RULING

1. What is before this Court is the Summons for Rectification of Grant dated June 17, 2022. The Administrators of the Estate pray for the following:-
 1. That the Grant of Letters of Administration issued to Sunil Narshi Shah and Kamal Narshi Shah in this matter on June 21, 2011 and the Certificate of Confirmation of Grant of Letters of Administration issued on May 21, 2012 be rectified in the following manner:-
 - a. The Certificate of Confirmation be rectified by adding to the schedule of distribution thereof the following:

One share in Unique housing developers Limited
Kamal Narshi Shah-56 years
100%
 2. That the Grant of Letters of Administration and the Certificate of Confirmation of Grant of Letters of Administration, duly rectified as aforesaid, be issued to the Applicant by the Registry.
 3. That the cost of this Application shall be provided for.
2. The Summons are supported by the joint Affidavit of Sunil Narshi Shah and Kamal Narshi Shah. They depose that they have since discovered assets belonging to the deceased that were unknown to them at the time the Grant was being issued and later confirmed. Therefore, they pray for the Confirmed Grant to be rectified to include the newly discovered asset and for the asset to be distributed to the beneficiary of the estate.



Determination

3. I have considered this Summons for Rectification of Grant and the Affidavit in support thereto. Rectification of Grants is provided for by Section 74 of the Law of Succession Act, Cap 160, Laws of Kenya which provides as follows:-

“Errors in names and descriptions, or in setting forth the time and place of the deceased’s death, or the purpose in a limited grant, may be rectified by the court, and the grant of representation, whether before or after confirmation, may be altered and amended accordingly.”

4. Rule 43(1) of the Probate and Administration Rules further stipulate that:-

“43(1) Where the holder of a grant seeks pursuant to the provisions of section 74 of the Act rectification of an error in the grant as to the names or descriptions of any person or thing or as to the time or place of the death of the deceased or, in the case of a limited grant, the purpose for which the grant was made, he shall apply by summons in Form 110 for such rectification through the registry and in the cause in which the grant was issued.”

5. From the aforementioned provisions, rectification is allowed in order to correct a misdescription of a property or to correct a name which has not been fully or properly described in the Grant.

6. So, does discovery of new evidence fit in the conditions stipulated in the aforementioned provisions? In Re Estate Of Charles Kibe Karanja (Deceased) 2015 eKLR the Court held as follows:-

“If there is discovery of new assets that were not available or had not been discovered at the time of distribution, among others; it would be imprudent to seek rectification or alteration or amendment of the certificate of confirmation of grant. Such changes are fundamental, not superficial. They go to the core of the distribution. They cannot be affected without touching the orders made by the court at the distribution of the estate. Consequently, such changes cannot and should not be effected through a mere amendment of the certificate of confirmation of grant. The proper approach ought to be an application for review of the orders made at the confirmation of the grant.”

1. From the foregoing I find that the sweeping changes proposed to be made by the summons do not fall under the scope of rectification under section 74. However, Rule 73 of the Probate and Administration Rules provides that:-

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

7. To meet the end of justice, I hereby allow the Summons dated June 17, 2022 as prayed.

8. Cost of the Application be in the Cause.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 3RD DAY OF JULY 2023

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E.K. OGOLA



JUDGE

In the presence of:

N/A for the Applicants

Gisiele Muthoni Court Assistant

